

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board)	
on Universal Service)	

Reply Comments of the Ad Hoc Telecommunications Users Committee

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") hereby submits its reply to comments filed in response to the Commission's October 27, 2003 Further Notice of Proposed Rulemaking in the above-captioned proceeding, in which the Commission poses numerous questions regarding what additional measures the Commission should take to help assure reasonable comparability of rates in rural areas served by large local exchange carriers, *i.e.*, the non-rural local exchange carriers.¹ Although the scope of this proceeding is relatively narrow, its outcome has significance beyond the relatively few states that receive non-rural local exchange carrier high cost support. Whatever measures, if any, adopted by the Commission in this proceeding will almost certainly be considered relevant in debates over the comparability of rural local exchange carriers' (RLECs) rates with the nationwide average rate. Ad Hoc submits, however, that the Commission is far from being in a position to adopt measures to provide

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 03-249, (released October 27, 2003), (hereinafter the *Remand Order* or the *Further Notice*, as appropriate).

supplemental support to non-RLECs serving high cost areas to help assure reasonably comparable rates.

Several parties have observed that it is virtually impossible to do the kind of rate comparison analysis that would be necessary for the exercise to be anything but arbitrary.² Service bundles are becoming increasingly common and are not limited to bundling of toll and local service for residential customers. Bundles often include local service, intrastate, interstate and some international toll service, vertical features (often referred to as CLASS services), high-speed Internet access and wireless service. VoIP, and probably other services and perhaps equipment rentals, will become part of service bundles, if not already offered in service bundles at a single price. Moreover, bundle pricing varies from provider to provider and from jurisdiction to jurisdiction with the regulatory oversight varying greatly from jurisdiction to jurisdiction. Finally, if the Commission initiates a proceeding that may ultimately replace the existing access charge scheme with a “bill-and-keep” approach, the impact on intrastate rate structures and end users will likely be very significant. In sum, the problem is far more complex than trying to account for different calling areas and comparing flat rated service with measured service, although the last problem is obviously difficult given different rate structures within states, among states and between providers. Given the state of the record, there is no rational way for the Commission to pull apart bundled pricing or to impute a rate for the local

² See, e.g., Iowa Utilities Board Comments at 3, Verizon Comments at 7. Ad Hoc also notes that at paragraph 41 of the *Remand Order*, the Commission stated that, “[t]he measure of reasonable comparability should be adjusted every year based on actual rate data.”

exchange service and the other services that qualify for universal service support.³

In response to the *Further Notice*, parties address the issue of the Commission's jurisdiction to compel states seeking supplemental rate comparability support to replace implicit cross-subsidies that are used to keep residential rates uneconomically low with explicit universal service funding mechanisms. Not surprisingly, parties have very different views on this issue. State regulatory authorities assert that such a Commission requirement would be an unlawful infringement on rate making authority that the Communications Act reserves to them.⁴ Other parties contend that section 254 of the Communications Act, 47 U.S.C. § 254, gives the Commission sufficient authority to require states to adopt explicit universal service funding mechanisms in lieu of implicit cross-subsidies.⁵ Given the Commission's reluctance to tackle this issue in the *Remand Order*,⁶ it is unlikely that the Commission will adopt the proposals that it condition availability of rate comparability subsidies on elimination of implicit subsidies. Although elimination of implicit cross-subsidies would best serve the public interest and the advancement of universal service, jurisdictional

³ Obviously, Vermont's proposal to compare revenues per line for local and intrastate toll calling, (see Vermont Public Service Board Comments at 4, 15), is dependent on determining the applicable rate for the units of such service. Even if a rate for exchange access service could be imputed, which Ad Hoc disputes, imputing rates for measured local calling and intrastate toll calls cannot be rationally done based on the record, and probably is, as Verizon suggests, virtually impossible, (see Verizon Comments at 7).

⁴ Vermont Public Service Board Comments at 16-18.

⁵ SBC Comments at 6-9.

⁶ *Remand Order* at ¶¶ 76-77.

comity concerns probably will cause the Commission to take a “go slow” approach.

The Commission, however, faces a more imminent problem – a problem for which a “go slow” approach would be unreasonable. Putting aside considerations of economic efficiency, elimination of implicit cross-subsidies would still be the right path because competition may ultimately erode the states’ ability to subsidize artificially low residential rates from overpriced business services. The Commission seems to be saying that states have some time to deal with this problem. As explained in Ad Hoc’s Comments and Reply Comments regarding Western Wireless’ Petition for Rulemaking (RM-10822), there is good reason to suspect that in some instances, investments and expenses associated with services that are not eligible for Universal Service Fund (USF) subsidies *may* have been accounted for in ways that inflate RLEC embedded costs and thus increase USF and other subsidies to RLECs. Misallocation of costs can be used to maintain rates that otherwise should be reduced in rate-of-return regulatory schemes. Put differently, misallocation of costs can result in rural rates being higher than they should be for rate comparison purposes. Moreover, if rate-of-return regulated RLECs and/or non-RLECs were earning above reasonable returns, the rural rates would be overstated in rate comparison analyses. All of the foregoing conditions would overstate rural rates in rate comparisons. None of the comments regarding rate comparisons address these matters, and thus do not go far enough in analyzing rate comparison issues. The Commission, as guardian of the seemingly ever-

expanding and stretched Universal Service Fund, should not, however, provide supplemental rate comparison subsidies until it investigates or requires states to actually investigate the RLEC and non-RLEC cost accounting, cost allocations and earnings. If the Commission concludes that states, rather than the Commission, should investigate these indisputably relevant matters, at a minimum, the Commission should refer to the Joint Board the question of the standards that should apply to the state investigations.

If the Commission nevertheless moves forward with supplemental subsidies to non-RLECs to achieve rate comparison goals, the Commission should consider a “matching” supplemental rate comparison subsidy program. Federal supplemental rate comparison subsidies would “match” state supplemental rate comparison payments. This approach would not come close to infringing on states’ rate making jurisdiction, while still providing a powerful incentive for states to actually make state funds available for universal service purposes, rather than relying excessively on federal payments. It would be a carrot and a stick, perhaps the best kind of incentive.

In view of the foregoing, Ad Hoc urges the Commission to seek more guidance from Joint Board on (1) how to make reasonable rate comparisons in an era of increasingly bundled service packages from numerous providers with “bill-and-keep” inter-carrier compensation possibly on the horizon and (2) the standards states should use to ferret out improper cost allocations and accounting and excessive rates. Finally, Ad Hoc recommends that the Commission make any supplemental federal rate comparability subsidies

contingent on states making equivalent direct, explicit payments, in other words,
a matching subsidy program.

Respectfully submitted,



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